

## **REMARKS**

### **I. Status of the Claims**

Claims 1-9, 11-16 and 18-20 are pending in this Application. Claims 1 and 20 have been amended to delete “perfumes; fragrances” from the list of benefit agents. Claim 17 has been canceled without prejudice or disclaimer for filing in a continuing application. Applicants have amended claim 8 so that it depends from claim 7 instead of claim 6 to provide antecedent basis for viscosity. Accordingly, no new matter has been introduced by this Amendment.

### **II. Claim Rejections Under 35 U.S.C. § 112**

#### *A. The Rejections of Claim 17*

The Examiner has rejected claim 17 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the enablement requirement and second paragraph as allegedly vague and indefinite. Applicants respectfully traverse these rejections. Nevertheless, solely in an effort to expedite prosecution, Applicants have canceled claim 17 without prejudice or disclaimer for filing in a continuing application. Accordingly, Applicants respectfully request withdrawal of these rejections.

#### *B. The Rejection of Claim 8*

The Examiner has rejected claim 8 under 35 U.S.C. § 112, second paragraph, as allegedly vague and indefinite in that there is no antecedent basis for “the viscosity.” Applicants have amended claim 8 so that it depends from claim 7 instead of claim 6 to provide antecedent basis for “viscosity”. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **III. The Rejections Under 35 U.S.C. §102**

#### *A. The Rejection Over Dawson*

The Examiner has rejected claims 1, 4-8, 11-17 and 20 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,772,427 ("Dawson"). Applicants respectfully traverse this rejection. The Examiner relies upon Dawson as teaching a ringing gel composition comprising perfumes. Applicants have amended claims 1 and 20 so that perfumes and fragrances are no longer listed as suitable benefit agents. Accordingly, Applicants respectfully request withdrawal of this rejection.

#### *B. The Rejection Over Herman*

The Examiner has rejected claims 1 and 20 under 35 U.S.C. §102(b) as allegedly anticipated by Global Cosmetic Industry, vol. 162, n. 2, pp. 22 and 24 ("Herman"). The Examiner relies upon Herman as disclosing the basic components of a ringing gel formulation. The Examiner notes that Herman disclosing the combination of nonionic surfactant with fragrance oil. Applicants have amended claims 1 and 20 so that perfumes and fragrances are no longer listed as suitable benefit agents. Accordingly, Applicants respectfully request withdrawal of this rejection.

### **IV. The Rejections Under 35 U.S.C. §103**

#### *A. The Rejection over Dawson In View Santora*

The Examiner has rejected claims 2, 3 and 9 as allegedly unpatentable over Dawson in view of U.S. Patent No. 6,046,145 ("Santora et al."). Applicants respectfully traverse this rejection.

Applicants respectfully request withdrawal of this rejection as Santora et al. fails to remedy the deficiencies of Dawson discussed above, *i.e.*, Dawson fails to teach or suggest the inclusion of a benefit agent as recited by Applicants amended claims.

Applicants additionally traverse this rejection for the following reasons. Dawson relates to post-foaming gel shower products that have good high and low temperature stability, achieve a copious amount of foam, have good skin feel characteristics etc. Dawson

teaches that to achieve such products the post-foaming gel shower product comprises a soap-free, surfactant-based gel composition consisting essentially of a major amount of water, about 3-23% by weight of anionic alkyl ether sulfate surfactant, about 1-24% by weight of a nonionic ethoxylated fatty alcohol or fatty ester, and about 5-20% by weight of a saturated aliphatic hydrocarbon foaming agent. Further, Dawson teaches that the major essential component of the post-foaming shower gel is about 60-75% water by weight of the gel base. Accordingly, it is clear from the teachings of Dawson that the amount of water, anionic surfactant and nonionic surfactant is essential to achieve a post-foaming gel shower product that achieves the benefits desired by Dawson.

The Examiner recognizes that Dawson does not teach the limitations of claims 2, 3 and 9, *i.e.*, a surfactant phase comprising a combination of amphoteric, nonionic and anionic surfactant or a composition comprises from about 60 to 95% by weight of a surfactant phase and from about 5 to 40% by weight of an oil phase. To remedy these deficiencies the Examiner relies upon Santora et al. Specifically, the Examiner relies upon Santora as teaching a cleansing and moisturizing surfactant composition comprising nonionic, amphoteric and anionic surfactants. According to the Examiner it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Dawson by (1) changing the amount of surfactant specifically taught by Dawson; (2) adding different surfactants than those taught by Dawson; and (3) adding cosmetic actives because of the expectation to have successfully produced a mild and non-greasy skin or hair composition with good cleansing effects. Applicants respectfully disagree.

As the Examiner is well aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See M.P.E.P. § 2143.

Here, there is nothing in the teachings of Dawson or Santora that would provide one of ordinary skill in the art with the motivation to modify the Dawson compositions as suggested by the Examiner. As discussed above, Dawson teaches that to achieve such products the post-foaming gel shower product comprises a soap-free, surfactant-based gel composition

consisting essentially of a **major amount of water**, about **3-23% by weight of anionic** alkyl ether sulfate surfactant, about **1-24% by weight of a nonionic** ethoxylated fatty alcohol or fatty ester, and about 5-20% by weight of a saturated aliphatic hydrocarbon foaming agent. Further, Dawson teaches that the major essential component of the post-foaming shower gel is about **60-75% water** by weight of the gel base. It is clear from the teachings of Dawson that the amount of water and the amount and type of anionic surfactant and nonionic surfactant is essential to achieve a post-foaming gel shower product that achieves the benefits desired by Dawson. Clearly, one of ordinary skill in the art would not be motivated to change the amounts and types of surfactants taught by Dawson. To do so, would result in losing of the benefits of the gel composition taught by Dawson.

Further, even if the Dawson compositions were modified as suggested by the Examiner, all of the claimed limitations are not taught or suggested. Neither Dawson nor Santora, taken alone or in combination, teach or suggest Applicants claimed **method of depositing a benefit agent** on a keratinous surface. Indeed, Dawson does not even mention the deposition of benefit agents.

For all these reasons, Applicants respectfully request withdrawal of this rejection.

#### *B. The Rejection of Claims 18-19*

The Examiner has rejected claims 18-19 as allegedly unpatentable over Herman in view of U.S. Patent No. 4,514,385 ("Damani et al.").

Although the Examiner mentions "Victor" in the rejection, Applicants were unable to determine what specific patent or reference the Examiner was relying on. Applicants reviewed both PTO forms 892 and 1449 and found no citation referred to as "Victor." Accordingly, Applicants are unable to appropriately respond to any rejection based on Victor. If the Examiner maintains the rejection based on Victor in the next office action, such office action should not be final as Applicants have not had an opportunity to properly respond to the rejection.

Recognizing that Herman does not teach or suggest the inclusion of anti-acne actives, the Examiner relies upon Damani et al. for teaching that "a gel acne treatment is well known in the art." According to the Examiner, "it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of

Herman by adding anti-actives as motivated by Damani or Victor because of the expectation of successfully producing [an] anti-acne gel composition.” Applicants respectfully disagree.

Damani et al. relates to anti-acne preparations comprising finely divided particles of benzoyl peroxide and salicylic acid dispersed in an aqueous carboxy vinyl polymer gel. The problem Damani et al. attempts to solve is the incompatibility of benzoyl peroxide and salicylic acid in solution. See col. 1, lines 33-56. According to Damani et al. this problem is solved by suspending finely divided particles of both benzoyl peroxide and salicylic acid in an aqueous carboxy vinyl polymer gel.

Contrary to the Examiner’s position, one of ordinary skill in the art would not have been motivated to add benzoyl peroxide and salicylic acid to the compositions taught by Herman since Damani et al. specifically teaches that benzoyl peroxide and salicylic acid are incompatible in solution. One of ordinary skill in the art would expect that if you added benzyl peroxide and salicylic acid, without the specific carboxy vinyl polymer gel, to the Herman compositions the salicylic acid and benzyol peroxide would be incompatible with each other.

Further, one of ordinary skill in the art would not have been motivated to add the carboxy vinyl polymer gel to the Herman compositions. Herman teaches that the basic components of the Herman ringing gel compositions are oil, water, surfactant and cosurfactant. The Examiner has failed to provide any teaching or suggestion in either Herman or Damani et al. that would provide one of ordinary skill in the art with the expectation of success. Herman specifically states “a rigid framework is necessary to produce a mechanical effect such as ringing.” Further, Herman states that the four variables of oil, water, surfactant and cosurfactant present in the Herman ringing gel compositions “are cumbersome to analyze.” Accordingly, one of ordinary skill in the art would not expect that the Herman compositions could be modified by incorporating a carboxy vinyl polymer gel comprising dispersed finely divided particles of benzoyl peroxide and salicylic acid and still maintain the ringing gel form. Further, since neither Herman nor Damani et al. teach or suggest a method for depositing a benefit agent, the combination of Herman with Damani et al. fails to teach or suggest all the claim limitations.

For all these reasons, Applicants maintain that the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

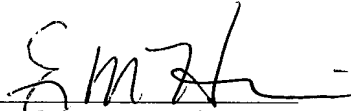
#### IV. Conclusion

For the reasons set forth above, Applicants respectfully request withdrawal of all outstanding rejections. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-529/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account 10-0750/JBP-529/EMH.

Respectfully submitted,

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